

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DENNIS LEE SMITH,	:	
	:	
Plaintiff,	:	Civil Action No. 07-525-JJF
	:	
v.	:	
	:	
PATRICIA A. MEYERS, MACK L.	:	
DAVIS, JR., STEVEN S. KREBS	:	
and BARBARA KREBS,	:	
	:	
Defendants.	:	

**MEMORANDUM ORDER**

WHEREAS, Plaintiff has filed a Notice of Substantive Motion For Stay (D.I. 18) requesting the Court to stay the enforcement of the Memorandum Order issued by the Court on March 5, 2008<sup>1</sup>, dismissing this action<sup>2</sup>;

WHEREAS, Plaintiff appears to suggest that the Court is divested of jurisdiction during the pendency of his interlocutory appeal, and therefore, lacked jurisdiction to dismiss his underlying lawsuit;

WHEREAS, the filing of an interlocutory appeal from an order denying a preliminary injunction does not prevent the Court from

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<sup>1</sup> The Order was incorrectly dated March 5, 2007. Although Plaintiff alleges that the Court "backdated" the Order to suggest nefarious conduct by the Court, it is evident that the mistake in the date was no more than a clerical error as Plaintiff's case was not even opened until August 30, 2007.

<sup>2</sup> The Court has also received notice from the Third Circuit (D.I. 21) that the Motion is to be treated as a Notice of Appeal, in addition to a request for a stay.

proceeding with the underlying action which may include the dismissal of the underlying claims; United States v. Price, 688 F.2d 204, 215 (3d Cir. 1982);

WHEREAS, Plaintiff has clearly stated that he does not wish to have this action proceed in this Court as a civil lawsuit;

WHEREAS, in any event, the elements for a stay mirror those required for granting injunctive relief, Hilton v. Braunskill, 481 U.S. 770, 776 (1987) (holding that the factors required for a stay are "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies"), and the Court has already concluded in the context of denying Plaintiff's Motion For Preliminary Injunction, that those factors are not met in this case;

WHEREAS, Plaintiff has also not offered any new evidence demonstrating that a stay is warranted;

NOW THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Notice of Substantive Motion For Stay (D.I. 18) is DENIED.

May 14, 2008

  
UNITED STATES DISTRICT JUDGE